Supreme Court, U.S.
FILED
AUG 21 1997
CLERK

No. 97-135

In The Supreme Court Of The United States

OCTOBER TERM 1996

OLD VAIL PARTNERS,

Petitioner,

v.

COUNTY OF RIVERSIDE; CITY OF TEMECULA,

Respondents.

On Petition For Writ of Certiorari To The United States Court of Appeals For The Ninth Circuit

RESPONDENT, CITY OF TEMECULA'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

PETER M. THORSON
CITY ATTORNEY
MITCHELL E. ABBOTT*
STEVEN R. ORR
ROBERT A. BALBUENA
RICHARDS, WATSON & GERSHON
A Professional Corporation
333 South Hope Street
Thirty-Eighth Floor
Los Angeles, CA 90071
(213) 626-8484

Counsel for Respondent City of Temecula

**Counsel of Record*

LANTAGNE LEGAL PRINTING
801 East Main Street Suite 100 Richmond, Virginia 23219 (800) 847-0477

QUESTION PRESENTED

Whether the Court of Appeals erred in ordering abstention under ***Younger v. Harris***, 401 U.S. 37, 91 S.Ct. 746, 27 L.Ed.2d 669 (1971) where Petitioner prosecutes an identical inverse condemnation action in state court.

TABLE OF CONTENTS

Page

QUESTION PRESENTED i

TABLE OF AUTHORITIES iv

RESPONDENT'S BRIEF IN OPPOSITION 1

STATEMENT OF THE CASE 2

REASONS WHY A WRIT OF CERTIORARI SHOULD BE DENIED 10

I. THE COURT OF APPEALS DID NOT ERR IN ORDERING ABSTENTION UNDER *YOUNGER* 10

II. OLD VAIL'S CLAIMS ARE WITHOUT MERIT AND SHOULD BE SUMMARILY DENIED 14

A. Petitioner Mistakenly Assumes That It Is Guaranteed a Federal Forum as a Matter of Constitutional Right 14

B. California Courts Present an Appropriate Forum in Which to Adjudicate Petitioner's Federal Takings Claim 17

C. The Court of Appeals Fully Considered and Correctly Decided That Petitioner's Federal Action Should Be Dismissed on *Younger* Grounds 21

III. ABSTAINING UNDER *YOUNGER* DOES NOT CONFLICT WITH PRECEDENT OF THE NINTH CIRCUIT 25

CONCLUSION 29

TABLE OF AUTHORITIES

Cases cited: *Page*

Beltran v. California,
871 F.2d 777 (9th Cir. 1988) 22

C-Y Development Co. v. City of Redlands,
703 F.2d 375 (9th Cir. 1983) 9

Colorado River Water Conservation Dist. v. United States,
424 U.S. 800, 96 S.Ct. 1236,
47 L.Ed.2d 483 (1976) 13

County of Allegheny v. Frank Mashuda Co.,
360 U.S. 185, 3 L.Ed.2d 1163,
79 S.Ct. 1060 (1959) 9

Crawley v. Hamilton County Commissioners,
744 F.2d 28 (6th Cir. 1984) 28

Ellison v. County of Ventura,
217 Cal.App.3d 455, 265 Cal.Rptr.
795 (1990) 17

First English Evangelical Lutheran Church v. County of Los Angeles,
210 Cal.App.3d 1353, 258 Cal.Rptr.
893 (1989) 17

First Lutheran Church v. County of Los Angeles,
482 U.S. 304, 10 S.Ct. 2378,
96 L.Ed.2d 250 (1987) 16

Franchise Tax Bd. v. Construction Laborers Vacation Trust,
463 U.S. 1, 103 S.Ct. 2841,
77 L.Ed.2d 420 (1983) 15

Fresh Int'l Corp. v. Agricultural Labor Relations Bd.,
805 F.2d 1353 (9th Cir. 1986) 19-20, 22

Furey v. City of Sacramento,
592 F.Supp. 463 (N.D.Cal. 1984) 25, 26

Gilbert v. State of California,
218 Cal.App.3d 234, 266 Cal.Rptr.
891 (1990) 16

Hawaii Housing Auth. v. Midkiff,
467 U.S. 229, 104 S.Ct. 2321,
81 L.Ed.2d 186 (1984) 25

Hensler v. City of Glendale,
8 Cal.4th 1, 32 Cal.Rptr.2d 244
(1994) 16

HFH, Ltd. v. Superior Court,
15 Cal.3d 508, 125 Cal.Rptr. 365
(1975), *cert. denied*, 425 U.S. 904 (1976) 16

Juidice v. Vail,
430 U.S. 327, 97 S.Ct. 1211,
51 L.Ed.2d 376 (1977) 20

Kollsman v. City of Los Angeles,
737 F.2d 830 (9th Cir. 1984) 8

Lockerty v. Phillips,
319 U.S. 182, 63 S.Ct. 1019,
87 L.Ed. 1339 (1943) 15

Long Beach Equities, Inc. v. County of Ventura,
231 Cal.App.3d 1016, 282 Cal.Rptr.
877 (1991) 14

MacDonald, Sommer & Grates v. County of Yolo,
477 U.S. 340, 106 S.Ct. 2561,
91 L.Ed.2d 285 (1986) 14

Middlesex County Ethics Comm. v. Garden State Bar Ass'n,
457 U.S. 423, 102 S.Ct. 2515,
73 L.Ed.2d 116 (1982) 12, 22, 24, 27, 28

Mission Oaks Mobile Home Park v. City of Hollister,
989 F.2d 359 (9th Cir. 1993),
cert. denied,
510 U.S. 1110 (1994) 12, 19, 28

Ohio Civil Rights Commission v. Dayton Christian Schools, Inc.,
477 U.S. 619, 106 S.Ct. 2718,
91 L.Ed.2d 512 (1986) 18

Palmore v. United States,
411 U.S. 389, 93 S.Ct. 1670,
36 L.Ed.2d 342 (1973) 15

Pennzoil Co. v. Texaco, Inc.,
481 U.S. 1, 107 S.Ct. 1519,
95 L.Ed.2d 1 (1987) 12, 19

Polykoff v. Collins,
816 F.2d 1326 (9th Cir. 1987) 25

Railroad Commission of Texas v. Pullman Co.,
312 U.S. 496, 61 S.Ct. 642,
85 L.Ed.2d 971 (1941) 8, 10-12, 18, 23, 25-27

Sinclair Oil Corp. v. County of Santa Barbara,
96 F.3d 401 (9th Cir. 1996) 26

Varjabedian v. City of Madera,
20 Cal.3d 285, 142 Cal.Rptr. 429 (1977) 16

Williamson County Regional Planning Comm'n v. Hamilton Bank,
473 U.S. 172, 105 S.Ct. 3108,
87 L.Ed.2d 126 (1985) 7

Younger v. Harris,
401 U.S. 37, 91 S.Ct. 746,
27 L.Ed.2d 669 (1971) ... i, 8, 10-11, 13, 17-25, 27-28

Statutes Cited:

United States Constitution, Article III,
Section 1 15

United States Constitution, Fifth Amendment 2

28 U.S.C. Section 1341 .....7, 15

28 U.S.C. Section 1342 15

42 U.S.C. Section 1983 ..... 2, 6

42 U.S.C. Section 1985 ..... 2, 6

Federal Rule of Civil Procedure 12(b)(1) 7

Federal Rule of Civil Procedure 12(b)(6) 7

California Constitution, Article 1,
Section 19 2

California Streets & Highways Code
Sections 10000, *et seq.* 3

RESPONDENT'S BRIEF IN OPPOSITION

Respondent City of Temecula, California ("City" or "Temecula"), hereby opposes Petitioner Old Vail Partners' ("Old Vail") petition for writ of certiorari seeking review of the judgment and opinion of the United States Court of Appeals for the Ninth Circuit entered on March 10, 1997. The Court of Appeals correctly decided that the District Court should abstain from hearing Old Vail's federal action under the *Younger* abstention doctrine inasmuch as Petitioner presently maintains an identical action in state court. While important to Petitioner, this case does not raise special or important issues of federal statutory or constitutional law warranting review by this Court. For these reasons and those set forth below, Old Vail's petition should be summarily denied.

STATEMENT OF THE CASE

Through identical state and federal actions below, Petitioner challenges the propriety of a local special tax and the City of Temecula's zoning authority, and contends that the application of that tax and zoning inversely condemns its property. Petitioner, therefore, seeks money damages from the City of Temecula, pursuant to 42 U.S.C. §§ 1983 & 1985, for violation of rights guaranteed under the Fifth Amendment and Article 1, section 19 of the California Constitution.[1]

---

[1] In that regard, the Fifth Amendment to the United States Constitution provides:

> ". . . nor shall private property be taken for public use, without just compensation."

The parallel provision of the California Constitution (Art. 1, sec. 19) provides:

> "Private property may be taken or damaged for public use only when just compensation . . . has first been paid to, or into court for, the owner."

Petitioner owns 39.8 acres of unimproved property in the City of Temecula ("the Property"). A year before Petitioner purchased the land, the County of Riverside ("County"), acting pursuant to the Municipal Improvement Act of 1913, as codified, California Streets & Highways Code §§ 10000, *et seq.*, formed Special Assessment District AD 159 to finance numerous public improvements within that special district.

The Property is located within AD 159, and consequently, the County levied an assessment on the Property for a proportionate share of the costs of the public improvements. The County thereafter recorded a lien against the Property to secure payment of the assessment in accordance with California law.

Old Vail purchased the Property on November 21, 1989. At the time, the land was located in an unincorporated section of the County. The local voters, however, had previously approved incorporating the City of Temecula

within the County, and on December 1, 1989, Petitioner's land became part of the newly-incorporated City of Temecula.

As County land, the Property was zoned for "commercial" use. The City maintained the County's land use designations for a period of four years. On November 9, 1993, the City adopted its General Plan which designated the real property adjoining California State Highway 79, one of the City's major thoroughfares, for "office professional" use. Petitioner's land adjoins that highway and thus became zoned for "office professional" use.

At the same time, the City Council adopted the Land Use Element of the General Plan, which identified the Property as part of "Future Specific Plan Areas Z_2 and Z_3" and within a "commercial specific plan overlay." This designation permits office professional uses as a matter of right, and further contemplates a wide range of other forms of commercial development, subject to Planning Commission

approval. Such an approach affords the City a measure of control over commercial development along its major thoroughfares.

Even though it ***never*** submitted a commercial development plan for approval, Petitioner alleges that the City "down-zoned" the Property, and thereby completely destroyed its economic viability. Without first exhausting available administrative remedies, Old Vail filed concurrent complaints in the Superior Court of the State of California for the County of Riverside and the United States District Court for the Central District of California. Through nearly identical pleadings, Petitioner alleges, *inter alia*, that Temecula has effected a "taking" in violation of the Constitutions of the United States and the State of California.

The gravamen of both lawsuits is that the assessments levied on the Property prior to the City's incorporation were based on its use for "commercial" purposes, and that the

City's subsequent alleged down-zoning to "other professional" office use renders *any* economically viable use of the property impossible.

The State Action -- Old Vail seeks to recover damages from the City under the theory of inverse condemnation (RCSC Case No. 253598). Old Vail predicates its claims on the state and federal constitutions.[2] On February 23, 1996, the court granted the City's motion for judgment on the pleadings. Old Vail appealed from the resulting judgment. That appeal is pending in the Court of Appeal for the State of California, Fourth Appellate District (4th Civ. No. E016793).

The Federal Action -- Old Vail filed an identical action in federal court. Upon the City's motion to dismiss,

---

[2] Old Vail characterizes its federal claims as "aris[ing] under the Federal Civil Rights Act, *inter alia*, 42 U.S.C. §1983 and §1985, to redress the deprivation, under color of state law, or rights, privileges and immunities secured to plaintiffs by the Constitution of the United States." (State Court Complaint at 9).

brought pursuant to Federal Rule of Civil Procedure 12(b)(1) and 12(b)(6), the District Court dismissed Old Vail's complaint on two grounds. First, it held that the Tax Injunction Act of 1937, as codified, 28 U.S.C. §1341, precluded federal jurisdiction over Old Vail's complaint because it challenged a locally imposed tax. Second, the District Court determined that the complaint was not ripe for federal judicial review because Old Vail could not make the requisite allegation that it had unsuccessfully attempted to obtain just compensation.[3] The order of dismissal was entered on November 9, 1994.

Petitioner timely moved for reconsideration of the order granting the City's motion. The District Court denied that motion on the basis that Petitioner failed to present any new grounds warranting reconsideration of the prior order,

---

[3] *See, e.g., Williamson County Regional Planning Comm'n v. Hamilton Bank*, 473 U.S. 172, 195, 105 S.Ct. 3108, 87 L.Ed.2d 126 (1985).

which had been the subject of thorough briefing and argument by the parties. The order denying reconsideration was entered on January 10, 1996.

Petitioner thereafter appealed to the Court of Appeals on February 10, 1997. Following briefing and argument, the Court of Appeals issued a decision vacating the judgment and remanding the case to the District Court with an order to abstain from exercising federal jurisdiction under ***Younger v. Harris***, 401 U.S. 37, 91 S.Ct. 746, 27 L.Ed.2d 669 (1971) ("***Younger***").

On February 21, 1997, Old Vail petitioned for rehearing. In its petition, Old Vail requested that the order of abstention be made under ***Railroad Commission of Texas v. Pullman Co.***, 312 U.S. 496, 61 S.Ct. 642, 85 L.Ed.2d 971 (1941) ("***Pullman***") rather than ***Younger***.[4] On March 10,

---

[4] As the Court of Appeals explained in ***Kollsman v. City of Los Angeles***, 737 F.2d 830, 833 (9th Cir. 1984): "***Pullman*** allows postponement of the exercise of federal jurisdiction

1997, the Ninth Circuit denied Old Vail's petition for rehearing. On remand, the District Court dismissed Old Vail's complaint without prejudice on July 3, 1997.

Old Vail filed the instant petition for writ of certiorari on July 22, 1997. As set forth below, the issues presented in this case do not warrant review by the United States Supreme Court through a writ of certiorari, and the petition should be summarily denied.

---

when 'a federal constitutional issue . . . might be mooted or presented in a different posture by a state court determination of pertinent state law.' ***C-Y Development Co. v. City of Redlands***, 703 F.2d 375, 377 (9th Cir. 1983) (quoting ***County of Allegheny v. Frank Mashuda Co.***, 360 U.S. 185, 189, 3 L.Ed.2d 1163, 79 S.Ct. 1060 (1959))."

REASONS WHY A WRIT OF CERTIORARI SHOULD BE DENIED

I.

THE COURT OF APPEALS DID NOT ERR IN ORDERING ABSTENTION UNDER *YOUNGER*

Seeking to pique the Court's interest, Petitioner dramatically insists that abstaining under ***Younger*** inequitably precludes an inverse condemnation litigant from ever adjudicating takings claims in federal court (*Pet.* at 8), and that this petition presents the Court with the opportunity to review when and whether the federal courts should apply the ***Younger*** and ***Pullman*** abstention doctrines. In so doing, Petitioner, however, nowhere contends that it cannot obtain a fair hearing in the California state courts, or that California's courts are somehow not able to adjudicate Petitioner's garden-variety inverse condemnation claims, or that it has been denied the opportunity to litigate its federal claims fully and completely in

the forum of its own choosing.

Old Vail does not challenge the propriety of federal abstention. Instead, it is unhappy with the Court of Appeals' decision to order abstention under ***Younger***, rather than ***Pullman***. Old Vail therefore seeks a writ of certiorari to preserve its opportunity to relitigate its takings claim in federal court should the City prevail in the state court proceedings *initiated by Petitioner*.

The petition should be denied for one simple reason: The Court of Appeals decided correctly to abstain under ***Younger***, given the facts and circumstances presented in this case. The Court of Appeals accurately perceived and applied the strong policy of avoiding federal interference in pending state proceedings enforcing state public policy, absent extraordinary circumstances (not presented herein), to Old Vail's claim that Temecula's change in zoning of property located within a special assessment district, created under

California law, constitutes a taking without just compensation. *See Mission Oaks Mobile Home Park v. City of Hollister, 989 F.2d 359, 360 (9th Cir. 1993), cert. denied*, 510 U.S. 1110 (1994), *quoting Middlesex County Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423, 431, 102 S.Ct. 2515, 73 L.Ed.2d 116 (1982). The Court of Appeals also correctly applied decisions conclusively holding that federal claims are appropriately adjudicated in state proceedings. *See Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1, 15, 107 S.Ct. 1519, 95 L.Ed.2d 1 (1987) (state courts presumed adequate forums to raise federal claims "in the absence of unambiguous authority to the contrary"); *Mission Oaks*, 989 F.2d at 361 (finding California state courts "provide ... an adequate opportunity to raise federal questions."). Moreover, Petitioner's claims do not involve unsettled questions of state law warranting *Pullman* abstention.

Younger and its progeny implement traditional concepts of equity **requiring** federal courts to refrain from acting where there exists an adequate remedy at law and where the petitioning party is not threatened with irreparable injury (***Younger***, 401 U.S. at 43-44). The ***Younger*** doctrine further serves to prevent a multiplicity of suits where a single action will adequately protect the rights asserted. Most importantly, by acknowledging the fundamental competency of state courts to adjudicate federal issues, the ***Younger*** doctrine furthers vital interests of comity which is at the heart of "Our Federalism."[5]

As the Court of Appeals correctly directed the District Court to abstain under ***Younger***, the Court should summarily deny Old Vail's petition for writ of certiorari.

---

[5] ***Younger***, as well as the other doctrines of abstention, is an exception to the general rule that federal courts should exercise the jurisdiction conferred on them by statute. ***See Colorado River Water Conservation Dist. v. United States***, 424 U.S. 800, 813, 96 S.Ct. 1236, 47 L.Ed.2d 483 (1976).

II.

OLD VAIL'S CLAIMS ARE WITHOUT MERIT AND SHOULD BE SUMMARILY DENIED

A. Petitioner Mistakenly Assumes That It Is Guaranteed a Federal Forum as a Matter of Constitutional Right

Old Vail seeks to recover damages from the City of Temecula on a theory of inverse condemnation. That theory of liability, of course, exists under both California and federal law. *See Long Beach Equities, Inc. v. County of Ventura*, 231 Cal.App.3d 1016, 282 Cal.Rptr. 877 (1991); *cert. denied*, 505 U.S. 1219 (1992); *MacDonald, Sommer & Grates v. County of Yolo*, 477 U.S. 340, 106 S.Ct. 2561, 91 L.Ed.2d 285 (1986). Even though it predicates its claims, in part, on the federal Constitution, Old Vail is not guaranteed a federal forum as a matter of constitutional right. The settled rule is that Congress is not obliged to provide that a federal claim be

litigated in a federal district court. ***See Palmore v. United States***, 411 U.S. 389, 400-401, 93 S.Ct. 1670, 36 L.Ed.2d 342 (1973); ***Lockerty v. Phillips***, 319 U.S. 182, 187-89, 63 S.Ct. 1019, 87 L.Ed. 1339 (1943). Acting under its constitutional authority to legislate the scope of district court jurisdiction (United States Const., Art. III, §1), Congress may and often does remit federal claims to the state courts. ***See, e.g., Franchise Tax Bd. v. Construction Laborers Vacation Trust***, 463 U.S. 1, 103 S.Ct. 2841, 77 L.Ed.2d 420 (1983); 28 U.S.C. §1341; 28 U.S.C. §1342.

Old Vail fails to offer *any* authority, case law or statutory, to support its underlying contention that it is entitled to adjudicate its federal claims in a federal court. The reason for its failure is manifest: there is no such right in cases such as the one at bar. California courts regularly, and quite competently, adjudicate issues of federal law, and the policy of comity militates in favor of acknowledging California's ability

to determine whether Old Vail's property was inversely condemned by the City of Temecula's zoning decision.[6]

---

[6] California courts regularly adjudicate federal constitutional claims. *See, e.g., **Hensler v. City of Glendale***, 8 Cal.4th 1, 32 Cal.Rptr.2d 244 (1994); ***Varjabedian v. City of Madera***, 20 Cal.3d 285, 142 Cal.Rptr. 429 (1977); ***HFH, Ltd. v. Superior Court, 15 Cal.3d 508, 125 Cal.Rptr. 365 (1975), cert. denied***, 425 U.S. 904 (1976). In ***Gilbert v. State of California***, 218 Cal.App.3d 234, 253, 266 Cal.Rptr. 891 (1990) the California Court of Appeal explained:

> "California cases frequently do not identify whether the inverse condemnation action is brought under state or federal law, or both, and in any event **often discuss federal precedent in deciding state inverse condemnation claims**. The recent litigation in ***First Lutheran Church v. Los Angeles County***, *supra*, 482 U.S. 304, represents the most startling, wholesale adoption of federal precedent to resolve a state constitutional claim. The lawsuit began solely as a state cause of action. The United States Supreme Court, however, was able to devise a federal question from the church's arguments before the state Court of Appeal. The church asserted recent federal decisions demonstrated federal constitutional error in the California Supreme Court's decision in ***Agins I***. Since the Court of Appeal applied ***Agins I*** to dismiss the church's action, thus rejecting the federal claim, the high court concluded the church preserved a federal question on appeal. On remand to determine whether the county's action amounted to an unconstitutional taking, the Court of Appeal for all practical purposes

B. California Courts Present an Appropriate Forum in Which to Adjudicate Petitioner's Federal Takings Claim

Old Vail contends that abstaining under *Younger* forecloses its opportunity to litigate its federal claims in a federal forum (*Pet.* at 10, 27-29). Such a concern is necessarily predicated on Old Vail's apparent anxiety that the California state courts will not adequately adjudicate its federal claims, or be in a position to deal with the "synergistic effects" (*Pet.* at 23) of zoning ordinances affecting specially assessed property.

---

analyzed the taking claim entirely on the basis of federal decisional law applying and construing the Fifth Amendment. (***First English Evangelical Lutheran Church v. County of Los Angeles*** (1989) 210 Cal.App.3d 1353 [258 Cal.Rptr. 893]; see also ***Ellison v. County of Ventura*** (1990) 217 Cal.App.3d 455 [265 Cal.Rptr. 795] [using *Agins II* to resolve state inverse condemnation claim]."

However, Old Vail nowhere contends that it has been (or will be) denied the opportunity to litigate its federal claims in California state court. Instead, Petitioner, through a mere *ipse dixit*, seeks a free insurance policy against defeat in the state courts in the form of ***Pullman*** stay. While such an outcome would expand Old Vail's tactical options and please its attorneys, the Constitution does not guarantee Old Vail access to a federal forum in the event of a disagreeable outcome in the state forum on the very same claims. The ***Younger*** doctrine appropriately serves, among other values, to prevent such multiplicity of suits where a single action will adequately protect the rights asserted.[7]

The federal courts have conclusively determined that federal claims may be adequately adjudicated in the state

---

[7] In fact, Old Vail need only have the opportunity to assert its federal claims in state court to satisfy ***Younger***'s concerns. Whether or not it avails itself of that opportunity is irrelevant. ***See, e.g., Ohio Civil Rights Commission v. Dayton Christian Schools, Inc.***, 477 U.S. 619, 106 S.Ct. 2718, 2724, 91 L.Ed.2d 512 (1986).

proceedings. *See Pennzoil*, 481 U.S. at 15-17. In *Mission Oaks*, 989 F.2d 359, for example, plaintiff filed suit in state court to challenge the constitutionality of a rent control ordinance. When the plaintiff filed in federal district court a year later, the court dismissed the action on the basis of *Younger*. The Court of Appeals affirmed the dismissal, concluding that *Younger* applies to claims challenging rent control ordinances as regulatory takings. In so doing, the Court of Appeals explained:

> "[W]e refuse to find that the courts of California are inadequate forums in which to raise federal takings claims.... We are convinced, as was the district court, that the **state courts will provide Mission Oaks an adequate opportunity to raise federal questions.**"

Mission Oaks, 989 F.2d at 361 (emphasis added).

Simply put, the availability of a federal forum is not indispensable to the adjudication of federal claims. *See Fresh*

Int'l Corp. v. Agricultural Labor Relations Bd., 805 F.2d 1353, 1362 (9th Cir. 1986) ("All that ***Middlesex*** requires is an opportunity to present the federal issue...."). As this Court stated in ***Juidice v. Vail***, 430 U.S. 327, 97 S.Ct. 1211, 51 L.Ed.2d 376 (1977):

> "Here it is abundantly clear that appellees had an opportunity to present their federal claims in the state proceedings. No more is required to invoke ***Younger*** abstention .... **Appellees need be accorded only an opportunity to fairly pursue their constitutional claims in the ongoing state proceedings, *Gibson v. Berryhill*, 411 U.S. 564, 577 (1973), and their failure to avail themselves of such opportunities does not mean that the state procedures were inadequate**. Presumptively, therefore, the principles which underlie ***Younger*** call for dismissal of the action."

Juidice, 430 U.S. at 337 (emphasis added).

Old Vail attempts to avoid this body of law by arguing that it has a right to separate state and federal forums on the basis that it is pursuing the adjudication of "distinct constitutional rights." (*Pet.* at 9). That argument, however, lacks a crucial explanation as to how the federal claims presented by Old Vail in the state forum are distinct from its identical federal claims presented to the District Court. Again, the reason is simple: Old Vail is simply advancing the same claims in two courts. ***Younger*** is appropriately applied in such a situation.

C. The Court of Appeals Fully Considered and Correctly Decided That Petitioner's Federal Action Should Be Dismissed on *Younger* Grounds

This Court has set out a three-pronged test for determining the circumstances in which abstention under ***Younger*** is appropriate and must be applied. Those circumstances must include the following:

"(1) the state proceedings are ongoing;

(2) the proceedings implicate important state interests; and

(3) the state proceedings provide an adequate opportunity to raise federal questions."

Middlesex County Ethics Committee, 457 U.S. at 432; ***Fresh Int'l***, 805 F.2d at 1357-58; ***Beltran v. California***, 871 F.2d 777, 781 (9th Cir. 1988).

In deciding to apply ***Younger***, the United States Court of Appeals for the Ninth Circuit made the requisite findings: "[i]n addition to this federal action, appellant is pursuing **identical** claims against defendants in California state court." (*Pet.*, Appendix B, at 2) (emphasis added). Applying the ***Middlesex*** test to the Old Vail's concurrent and identical federal and state actions, the Court of Appeals found:

> "Each of these criteria is met: [1] Appellant's parallel state action was filed on the same day as the federal complaint and is currently on appeal [citations omitted]; [2] 'land use planning is a sensitive area of social policy,' [citations omitted] that implicates 'substantial' state interests; and [3] California state courts afford appellant 'an adequate opportunity' to raise federal takings claims."

(*Pet.*, Appendix B, at 3). Consequently, the Court of Appeals vacated the District Court's opinion and remanded the case to be dismissed without prejudice on the grounds of ***Younger*** abstention.

In short, the Court of Appeals correctly found that each criterion was satisfied. It properly abstained from the Petitioner's case on ***Younger*** grounds as it was **required** to do. Although Petitioner attempts to make a case for applying ***Pullman***, Old Vail nowhere denies the criteria for abstaining under ***Younger*** were not met in this instance. Instead, Old

Vail argues on the basis of an undesirable outcome rather than in how the Court of Appeals implemented the unambiguous guidelines of ***Middlesex***, and attempts to argue that the competing doctrines have been applied inconsistently and interchangeably in the land use context.

Its points notwithstanding, Old Vail cannot ignore (though it tries) the fact that important state interests (as to community zoning and the means of financing public improvements) are implicated by its claims, that state proceedings were ongoing at the time of federal action, and that the state court provides an adequate opportunity and competent forum to present the federal claims. No matter how one looks at it, this case presents a textbook example of ***Younger*** abstention.[8]

---

[8] Old Vail, additionally, attempts to attribute significance to the respective moments of filing its state and federal complaints (*Pet.* at 16, fn. 3). When the respective clerks accepted the identical complaints for filing is of no moment. "Whether the state proceedings are 'pending' is not determined by comparing the commencement dates of the federal and state

III.

ABSTAINING UNDER *YOUNGER* DOES NOT CONFLICT WITH PRECEDENT OF THE NINTH CIRCUIT

Petitioner boldly asserts that the Court of Appeals' decision to abstain under ***Younger*** doctrine conflicts with its own precedent and should be set aside for that reason (*Pet.* at 11, 18). In support of that inaccurate assertion, Old Vail points to several decisions applying ***Pullman*** to land use/inverse condemnation cases. Petitioner's discussion focuses only on two readily distinguishable cases. The first case, upon which Petitioner place principal reliance, is the decision of the District Court in ***Furey v. City of Sacramento***, 592 F.Supp. 463 (N.D.Cal. 1984). Other than stating that

---

proceedings." ***Polykoff v. Collins***, 816 F.2d 1326, 1332 (9th Cir. 1987). ***Younger*** abstention applies if the state proceedings have been initiated "before any proceedings of substance on the merits have taken place in federal court." ***Hawaii Housing Auth. v. Midkiff***, 467 U.S. 229, 238, 104 S.Ct. 2321, 81 L.Ed.2d 186 (1984).

federal and state actions had been filed, the court in ***Furey*** does not discuss the analysis involved (or not) in applying ***Pullman*** abstention. Rather, the district court simply stated that ***Pullman*** abstention was applied in the prior action and nothing more.[9]

Petitioner next invokes the recent decision in ***Sinclair Oil Corp. v. County of Santa Barbara***, 96 F.3d 401 (9th Cir. 1996). ***Sinclair*** is even more distinguishable given that the parties had informed the court that the state litigation had been voluntarily stayed (96 F.3d at 404 n.1). As such, the state

---

[9] Petitioner similarly directed the District Court's attention to the ***Furey*** decision. In its opinion (*Pet.*, Appendix D, at 10), the District Court noted:

> "Plaintiff fails to mention, however, that the *Furey* court had explicitly noted that the plaintiff had exhausted his state procedures and therefore had no adequate state remedy remaining. *Id.* At 1450, n.1."

The District Court correctly decided that the decision in ***Furey*** did not apply to Old Vail's claims. Nothing about the claim has changed since the District Court entered its order of dismissal on November 9, 1994.

proceedings in ***Sinclair*** were *not* ongoing so as to satisfy the first element of the ***Middlesex*** test in deciding whether to apply ***Younger*** abstention.

Moreover, as Old Vail readily admits, the fact that the state action did not request damages and/or "just compensation" prevented the state court from addressing this important federal issue. As such, ***Younger*** was inapplicable given that the state proceeding would not have provided an adequate opportunity to raise this federal issue. Not surprisingly, the court applied ***Pullman*** to abstain, albeit temporarily, from hearing the takings claim.

Petitioner then attempts to fashion additional requirements and/or restraints to applying the ***Younger*** abstention doctrine. Petitioner, for example, cites Sixth Circuit authority to prove that ***Younger*** is inapplicable where there is a single plaintiff in both the state and federal actions, and where the federal action is not an attempt to contravene or undermine the correlative state action (*Pet.* at 27). In so arguing, Old Vail

boldly asserts that "[t]he U.S. Supreme Court has never explicitly sanctioned the employment of ***Younger*** abstention" in such circumstances (*Pet.* at 25-26). The United States Supreme Court, of course, is not able, in advance, to identify every instance in which ***Younger*** abstention is appropriate. Arguing in the negative, however, only results in Petitioner's succeeding to prove nothing.

Although Old Vail is able to cite to a Sixth Circuit decision (***Crawley v. Hamilton County Commissioners***, 744 F.2d 28 (6th Cir. 1984)), and a Ninth Circuit decision case referencing ***Crawley*** in a footnote, those cases do not control, or even lend assistance, to the task at hand. A brief review of the previously discussed and *more recent* Ninth Circuit decision, ***Mission Oaks***, reveals that the ***Middlesex*** test controls the analysis (***Mission Oaks***, 989 F.2d at 360-63), and whether the plaintiff is identical in both actions (which was the case) or whether there was a supposed attempt to restrain the state action is irrelevant.

Therefore, the decision below to abstain under *Younger* was proper and required.

CONCLUSION

For the foregoing reasons, Respondent respectfully requests the Court to deny Old Vail's petition for a writ of certiorari.

Dated: August 21, 1997

Respectfully submitted,

PETER M. THORSON
CITY ATTORNEY
MITCHELL E. ABBOTT*
STEVEN R. ORR
ROBERT A. BALBUENA
RICHARDS, WATSON & GERSHON
A Professional Corporation
333 South Hope Street
Thirty-Eighth Floor
Los Angeles, CA 90071
(213) 626-8484

Counsel for Respondent
City of Temecula

* *Counsel of Record*